

REMARKS

This application contains claims 1-34 and 37-74 pending and under consideration. In an official communication dated 23 December 2008, objections were raised against claims 37, 38 and 41-44; and claims 1-34 and 37-74 were rejected on the grounds of judicially created, non-statutory obviousness-type double patenting. It is believed that all pending claims are allowable.

I. Non-Statutory Obviousness-Type Double Patenting Rejection

Claims 1-34 and 37-74 were rejected on the ground of judicially created, non-statutory obviousness-type double patenting over claims 1-22 of US patent 7,396,846 (application, serial no. 10/510,393).

The undersigned attorney for the applicants submits the Terminal Disclaimer in order to advance the prosecution of the instant application. The submission of the Terminal Disclaimer is not to be considered an admission that the claims of the instant patent application are obvious in light of claims in the cited patent, US 7,396,846, nor an acquiescence on the merits of the rejection. Quad Environmental Technologies Corp. v. Union Sanitary District, 20 USPQ 1392, 1394, 1395 (Fed. Cir. 1991).

II. Claim Objections

Objections were raised to claims 37, 38, and 41-44 for being dependent upon a rejected base claim. However, in light of the Terminal disclaimer, it is believed that these objections are overcome.

III. Conclusion

In light of the comments above and the Terminal disclaimer, withdrawal of all remaining rejections and objections is requested. Applicants respectfully request timely reconsideration of this application leading to allowance of all pending claims. The Examiner is invited to contact the undersigned attorney by telephone if there are any questions about

this Response or other issues that may be resolved in that fashion.

Respectfully submitted,

/James B. Myers/
James B. Myers
Attorney for Applicants
Registration No. 42,021
Phone: 317-276-0755

Eli Lilly and Company
Patent Division/
P.O. Box 6288
Indianapolis, Indiana 46206-6288
25 February 2009